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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Armenia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the sale of children, child prostitution and child pornography, on her mission to Armenia. In the present report, the Special Rapporteur explores issues relating to the sale and sexual exploitation of children in Armenia in the light of international human rights norms and standards. On the basis of information gathered prior to, during and after her visit, the Special Rapporteur highlights legislative initiatives, institutional framework and child protection policies implemented to combat and prevent the phenomena, as well as measures available to provide care, recovery and reintegration for child victims. The Special Rapporteur makes recommendations with a view to strengthening efforts to address the phenomena, improve child protection and minimize the risks of children falling victim to the sale of children, child prostitution and child pornography.

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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Armenia*

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* Circulated in the language of submission only.

I. Introduction

A. Programme of the visit

1. At the invitation of the Government of Armenia, the Special Rapporteur on the sale of children, child prostitution and child pornography visited the country between 12 and 18 May 2015. The objective of the visit was to assess the situation of the sale of children, child prostitution and child pornography in Armenia, and to evaluate the national child protection system, with a view to making recommendations to prevent and eradicate all forms of sale and sexual exploitation.

2. In the course of the visit, the Special Rapporteur visited Yerevan, Vanadzor and Gyumri. At the national level, she met with the Minister of Justice, the Minister of Territorial Administration and Emergency Situations, the Minister of Diaspora, the Minister of Culture, the Deputy Minister of Foreign Affairs, the Deputy Minister of Labour and Social Issues, and the Deputy Minister of Health. She also met with the President of the Constitutional Court, the Chairman of the Criminal Chamber of the Court of Cassation, the Prosecutor General, the Head of the Police Department on Protection of Juvenile Rights and Fight against Domestic Violence, the Inter-Agency Working Group against Trafficking in Persons, the Chairperson of the Chamber of Advocates, the Deputy Human Rights Defender, and a member of the State Council on Statistics. At the National Assembly, she met with members of the Standing Committee on Human Rights and Public Affairs. At the *marz* (regional) and community levels, she met with representatives of governors' and mayors' offices, prosecutors, police, and divisions on family, women and child rights protection.

3. The Special Rapporteur met with representatives of civil society and non-governmental organizations (NGOs) working on child rights and protection issues, the business sector, such as Internet service providers, and with the Director of the Union of Incoming Tour Operators of Armenia. She also met with the United Nations country team and the Deputy Head of the Council of Europe Office in Yerevan.

4. The Special Rapporteur visited a child support centre, two boarding schools, an institution for children with disabilities, and a reception centre for refugees, asylum seekers and other displaced persons.[1] In addition, she met with young people in Yerevan and Gyumri to learn first-hand about their views on issues related to her mandate.

5. The Special Rapporteur wishes to thank the Government of Armenia for facilitating the meetings with State agencies. She also thanks the United Nations office in Armenia, the United Nations Children's Fund (UNICEF), civil society organizations and the Office of the United Nations High Commissioner for Human Rights for their assistance before, during and after her mission.

B. Context

6. Armenia gained its independence from the Soviet Union in 1991. The border with Turkey remains closed, compounding the challenge of a landlocked State and constraining economic development. The closure of the borders by Azerbaijan and Turkey has a negative influence on the economic growth of the country, which has worsened with the

[1] The Fund for Armenian Relief Children's Support Center in Yerevan, Vanadzor Care and Protection Centre, Gyumri Social Childcare Centre and Yerevan Nubarashen night-care institution.

global financial crisis of 2008.[2] The current rate of poverty is 30 per cent.[3] Children are particularly affected, with 34 per cent of infants aged 0-5 living below the poverty line.[4] In 2015, Armenia joined the Eurasian Economic Union, a Russian-led customs union.

7. The population of 3.02 million is mainly Armenian (98.1 per cent), with Yezidi and other minorities (1.9 per cent).[5] Some 92.6 per cent of the population is Christian.[6] The Armenian diaspora is estimated to amount to 8 million people.[7] Remittances play an important role in the economy. Among the population, 723,000 people are under the age of 18 and 210,000 are under the age of 5.[8]

II. Situational analysis

A. Scope of the sale of children, child prostitution and child pornography

8. According to statistics provided by the police and the Office of the Prosecutor General, the number of cases investigated and perpetrators prosecuted and convicted for the offences of the sale of children, child prostitution and child pornography is relatively low. However, all those who spoke to the Special Rapporteur acknowledged that there are gaps in terms of legislation, training, awareness-raising, detection and reporting of cases of sexual abuse and exploitation of children, which results in underreporting. Consequently, the exact scope of the sale of children, child prostitution and child pornography is difficult to determine.

1. Sale of children

9. According to statistics provided by the Office of the Prosecutor General, between 2010 and 2014 seven criminal cases were initiated for the sale of children, five of which were dismissed and two sent to trial, resulting in the conviction of four persons to 2 to 3 years of imprisonment. Most of those cases were related to crimes committed in adoption processes.

10. Irregularities committed in adoption processes have been a major issue of concern. That is particularly the case in relation to intercountry adoptions, which have given rise to considerable financial transactions and have often led to corruption. According to statistics provided by the Ministry of Justice, as at April 2015, the number of intercountry adoptions had decreased significantly, from 69 in 2010 to 27 in 2014.[9] The Special Rapporteur commends the efforts made by the Government to reduce the number of intercountry adoptions and encourages it to continue implementing child protection policies that favour family support, alternative care and domestic adoptions.

11. Despite the decrease, the Special Rapporteur notes that the number of intercountry adoptions continues to be higher than the number of domestic adoptions, although access to reliable data is a major problem. Statistics on adoptions in Armenia are often conflicting and incomplete, which results in contradictory findings. According to available data, in

[2] See www.un.am/up/file/Armenia%20-%20UNDAF%202016-2020%20-%20eng_arm.pdf.
[3] See http://armstat.am/file/article/5._poverty_2015e_2.pdf.
[4] Ibid.
[5] See http://armstat.am/file/doc/99478353.pdf.
[6] See www.cia.gov/library/publications/resources/the-world-factbook/geos/am.html.
[7] See www.unfpa.org/sites/default/files/portal-document/Armenia_UNDAF%202010-2015.pdf.pdf.
[8] See http://data.unicef.org/countries/ARM.html.
[9] See https://assets.hcch.net/upload/adostat2014am.pdf.

2013 there were 144 applications for adoptions from foreign nationals and 101 from Armenian nationals. In the same year, 27 children were adopted by foreign nationals and 20 by Armenian nationals.[10] The United States of America, Italy and France are the main receiving countries.[11]

12. Even though the number of Armenian citizens interested in adoption is quite significant, applicants face difficulties in the adoption process owing to a lack of access to information, a lack of understanding of the process, and a lack of access to children awaiting adoption.[12] During her visit, the Special Rapporteur stressed that adoption must not be regarded as an answer to the wishes of the prospective adoptive parent but rather as a child protection measure. Moreover, intercountry adoptions should be envisaged for children who cannot benefit from national care and protection measures. However, financial transactions involved in intercountry adoptions indicate that the best interests of the child are not the paramount consideration in such adoptions, which is a problem that Armenia and receiving countries must address in an urgent manner (see CRC/C/OPSC/ARM/CO/1, paras. 18 and 19). Greater transparency over fees must be established by foreign agencies operating in Armenia and the central authorities of receiving countries must require their accredited agencies to comply with that requirement.[13]

13. While commending the decrease in the number of adopted children, the Special Rapporteur urged the Government to establish monitoring mechanisms to minimize the risk of adoptions not being processed through the established processes and institutions. Effective monitoring of adoption processes is necessary to ensure that adoptions are not carried out through improper inducement, in violation of international human rights norms and standards.[14]

14. Child marriage constitutes another form of sale of children. Data on child marriage in Armenia are very limited. According to one study, since the country gained independence, the average age of marriage has increased: girls aged 15 to 19 made up 7.9 per cent of all married women in 2010 and 8.5 per cent in 2000, while boys in the same age group made up 1 per cent of all married men in 2010. However, child marriage is widely practised among the Yezidi minority, where rates of unregistered marriages are higher, which makes difficult to determine the exact scope of the phenomenon. Yezidi girls usually marry at 13 to 14 years and boys between 17 and 20. In most cases, those marriages are arranged by the children's parents.[15] During her visit, the Special Rapporteur stressed that child marriage constitutes a violation of the rights of the child to health, education and development, and noted that girl spouses are also vulnerable to domestic violence and sexual abuse.

15. In respect of child labour and the related sale of children, there are no official data on the scope of the phenomena, which hampers the Government's ability to adopt and implement effective policies. Available reports indicate that 8.1 per cent of children aged between 3 and 14 (30,494 children) are working in the country.[16] Refugee children are also victims of different forms of child labour, such as domestic or agricultural work.[17] Children

[10] See https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/book-eng.pdf.
[11] See www.hcch.net/en/publications-and-studies/details4/?pid=5045&dtid=32.
[12] See www.wvarmenia.am/en/news/show/145.
[13] See https://assets.hcch.net/upload/wop/note33fa2015_en.pdf.
[14] See https://assets.hcch.net/upload/adoguide_e.pdf.
[15] See http://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa%20armenia%20overview.pdf.
[16] See www.dol.gov/ilab/reports/child-labor/findings/2014TDA/armenia.pdf.
[17] See https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/REFUGEE%20CHILD%20RIGHTS%20SITUATION_SC_UNHCR.pdf.

in Armenia are also vulnerable to forced begging.[18] In that regard, the Special Rapporteur noted the paucity of information regarding children living and working on the street, which was a major issue of concern in Armenia in the 1990s. According to the police, the decrease in the number of street children is the result of their work. The few cases that are recorded concern children who left their homes owing to conflict in the family. In such cases, the police intervenes to have the children quickly located and returned to their families. The Special Rapporteur noted that child welfare officials should be involved in those cases in order to ensure that the best interest of the child is respected.

2. Child prostitution, sexual abuse and violence

16. According to data provided by the Office of the Prosecutor General, between 2010 and 2014 nine persons were convicted for trafficking in children for the purpose of prostitution, with sentences of 4 to 11 years of imprisonment handed down. In 2013, law enforcement agencies opened four investigations for trafficking in children for the purpose of exploitation, three of which were related to begging and one to sexual exploitation.

17. While official statistics on sexual exploitation of children are relatively low, the extent of sexual abuse and violence against children is worrying. In 2014, the police registered 551 cases of domestic violence and 91 cases of sexual crimes. In the majority of domestic violence cases against women or girls, the offender was the husband (404), followed by family members (46) and parents (27). In 2014, the police registered 63 cases of sexual crimes against girls and 3 against boys. According to Save the Children Armenia, sexual crimes against children are the most common cases of violence against children.[19]

18. According to data provided by the Armenian National Coalition for Child Protection, in 2013 child protection organizations provided assistance in 504 cases of psychological abuse and 255 cases of physical abuse against children. Those statistics reflect the scope of violence against children in the country, although it is feared that many cases go undetected owing to the lack of child-friendly complaint, reporting and referral mechanisms. A survey conducted by the NGO Hope and Help concluded that there is a tendency among children not to report cases of sexual abuse. One third of the teenagers interviewed responded that if they witnessed or were victims of sexual abuse they would hide it because of fear or shame.[20] Awareness-raising campaigns on the rights of the child and education programmes aimed at combating taboos around violence against children, including sexual exploitation, as well as comprehensive research on the scope of the phenomena, are key elements to effectively combating and preventing the scourge.

3. Child pornography, online abuse and exploitation

19. Statistics provided by the Office of the Prosecutor General show that between 2010 and 2014, two criminal cases were initiated for storage and distribution of child pornography. Two persons found guilty of that offence were sentenced to 4 and 5 years of imprisonment respectively. In 2013, law enforcement agencies opened two cases for child pornography and none in 2014. In 2015, 11 cases of dissemination of pornographic material were registered by the police, resulting in criminal charges.

20. Despite the very low number of criminal cases related to child abuse material, the fast penetration rate of the Internet (80 per cent) that Armenia has experienced in the past years renders it vulnerable to child sexual abuse and exploitation online. According to a 2014 survey, the index of cybercrime risks is high in Armenia. Children are affected by an

[18] See www.state.gov/documents/organization/243558.pdf.

[19] See https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/book-eng.pdf.

[20] See www.enut.ee/lisa/armeenia_uurimuse_kokkuvote.pdf.

average of three risk factors, including insecure Internet connections and a lack of confidentiality concerning personal data, which renders them potential victims of cybercrime. The survey also showed that children lack knowledge about safe Internet usage; 17 per cent of children had accessed sites with age restrictions.[21] Representatives of Internet service providers noted that, even though the production of child abuse material online is practically non-existent in Armenia, accessing and sharing such material online is a major problem, and adequate legislative and technical measures are required to combat that phenomenon.

B. Root causes and risk factors

21. The Special Rapporteur observed a number of multidimensional factors that increase the vulnerability of children to sexual exploitation and sale. In the light of the combined emerging risk factors and the highly profitable nature of their sale and sexual exploitation, children remain at high risk of becoming victims of sale, prostitution and pornography.

22. The socioeconomic hardship that the country is enduring has resulted in an increase in poverty, labour migration and a weakening of families. Most migrants are men, while women stay in charge of families. The Special Rapporteur is deeply concerned at the lack of sustainable programmes to strengthen families and parenting and the limited social services available for children and families in vulnerable situations. During her visit, the Special Rapporteur learned of cases of children who were pushed to engage in prostitution, forced labour or begging on the streets in order to provide for their families.

23. Moreover, the lack of adequate State support to families often results in children being placed in institutions. The Special Rapporteur encountered many children who had been placed in residential care because their parents lacked the means and support to take care of them. Placing children, including children with disabilities, in institutions renders them vulnerable to abuse, exploitation, trafficking and sale for adoption, in particular when institutions lack monitoring mechanisms and trained personnel to identify such cases.

24. Gender inequality also renders children, in particular girls, more vulnerable to sexual abuse and exploitation. Pervasive gender inequality is at the root of prenatal sex selection, child marriage and domestic violence. The Special Rapporteur expressed concern over the strong trend of prenatal sex selection in the country. Since 1993, the sex ratio at birth has become skewed, with 114 boys born for every 100 girls in 2012.[22] Furthermore, early and forced marriage of girls is still practised within the Yezidi community, and is grounded in the lack of value placed on women's and girls' role in society. Gender-based violence and domestic violence contribute significantly to the vulnerability of children to fall victim of sexual abuse and exploitation. The Special Rapporteur stressed the urgent need to break the wall of silence around those crimes, through specific legislation, awareness-raising and detection.

25. Another group of children vulnerable to sexual abuse and exploitation are asylum-seeking and refugee children. In the past years, Armenia has been receiving a considerable influx of refugees, especially from the conflict in the Syrian Arab Republic.[23] In order to prevent cases of sexual abuse of child refugees, the Special Rapporteur urged State authorities to increase capacities and facilities, including a new reception centre with adequate staff and services, with the support of the international community, and to

[21] See www.enut.ee/lisa/armeenia_uurimuse_kokkuvote.pdf.

[22] See http://eeca.unfpa.org/sites/default/files/pub-pdf/Sex-selective_abortions_report_Eng.pdf.

[23] According to information provided by the Government, 55 foreign children sought asylum in Armenia in 2014; 38 were granted refugee status.

establish appropriate monitoring, reporting and referral mechanisms with prevention and protection purposes.

26. Moreover, the fast penetration rate of the Internet in Armenia coupled with the absence of regulation of Internet service providers and telecommunications companies, and the absence of coordinated measures to ensure child safety online, place the country at a high risk of child sexual abuse and exploitation online.

III. Measures to combat and prevent the sale of children, child prostitution and child pornography

A. Legal framework

27. Armenia ratified the Convention on the Rights of the Child in 1993 and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2005. Armenia has also ratified the International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182), and the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. The Special Rapporteur urged national authorities to ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence in order to enhance the protection of children from sexual abuse and exploitation at the national level. She also encouraged the national authorities to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

28. Children's rights are protected under the Constitution, which is currently undergoing a reform process. Amendments to the Constitution were submitted to a referendum on 6 December 2015. The amendments include a reference to two of the principles enshrined in the Convention on the Rights of the Child, namely non-discrimination and the best interests of the child. However, they overlook other principles that are equally important, namely the rights of the child to development and to be heard. The Special Rapporteur regrets that the constitutional reform process has put on hold the long overdue legislative reform process, which involves the reform of the Criminal Code, the Code of Criminal Procedure and the Family Code, and should result in enhanced protection of children, including in adoption processes and criminal proceedings. The draft code of criminal procedure includes provisions aimed at the protection of children, such as the participation of psychologists in criminal investigations involving children, closed hearings of testimonies of child victims, and the video recording of interviews of children. The Special Rapporteur encourages the authorities concerned to adopt a new code of criminal procedure that ensures access to justice for children, inter alia through child-friendly legal aid and child-sensitive adjudication (see A/HRC/29/26).

29. In 1996, Armenia adopted a law on the rights of the child, which incorporates the principles and most of the provisions enshrined in the Convention on the Rights of the Child. In 2013, the country introduced amendments to key domestic laws, including the Family Code, the Criminal Code and the Labour Code, to improve child protection, including from sexual crimes. However, not all instances of violence against children, such as neglect and physical or psychological violence, are punishable. Other types of violence against children which are punished by the Criminal Code, such as kidnapping and

trafficking, are subject to private prosecution.[24] Moreover, national legislation does not prohibit corporal punishment of children in all settings.[25] The Special Rapporteur stressed that those legislative gaps hamper the fight against abuse, violence and exploitation of children and result in impunity for perpetrators of such acts.

30. Article 41 of the Family Code defines a child as any person under the age of 18. Article 24 of the Criminal Code establishes the criminal responsibility of children aged 14 and above in relation to offences of a grave nature. In 2013, the legal minimum age of marriage for women was raised from 17 to 18 (article 10 of the Family Code), making it equal to the legal minimum age of marriage for men. However, legislation allows children aged 16 to marry with the authorization of their parents or legal guardians. The Special Rapporteur called on the Armenian authorities to reform legislation to exclude exceptions that allow for child marriage, as they violate international human rights norms and standards.

31. Under articles 261 and 262 of the Criminal Code, involvement in or facilitation of child prostitution is criminalized with penalties ranging from a fine of 300 to 500 times the minimum wage or correctional labour for up to 2 years to imprisonment for 3 to 6 years. The same criminal acts, if committed by an organized group, are punished with 4 to 8 years of imprisonment.

32. Forcing children to participate in the creation and dissemination of child abuse material is punished with a fine of 400 to 800 times the minimum wage, detention of up to 3 months or imprisonment for up to 3 years. The same criminal act, if committed by an organized group, is punished with 2 to 4 years of imprisonment, under article 263 of the Criminal Code. In such cases, the initiation of criminal proceedings does not depend on the child victim filing a complaint. The Special Rapporteur called on the national authorities to strengthen domestic legislation by prohibiting and criminalizing the accessing and sharing of child abuse material online. In that regard, she noted that Internet service provides would be interested in participating in consultations led by the Government with the aim of enhancing online child protection.

33. Article 168 of the Criminal Code punishes with 2 to 5 years of imprisonment the buying of a child with the intent of placing him or her under the care of the recipient. The same criminal act, when committed with the abuse of official position by means of organizing the crossing of the State border or by means of fake adoption, is punished with 4 to 8 years of imprisonment. The Special Rapporteur urged the national authorities to ensure full incorporation into domestic legislation of the crimes contained in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in particular, the definition of the sale of children, including for the purposes of sexual exploitation and child labour, as a distinct crime from trafficking.

34. Adoption in Armenia is regulated by the Family Code and governmental decree No. 269-N of 18 March 2010, which outlines the adoption procedure. Adoption of an Armenian child by foreign nationals, stateless persons or Armenian nationals living outside of the country is only permitted in cases in which it is not possible to place the child with relatives or in a family of Armenian nationals regularly residing in the country. Adoption is granted by a court upon application by the prospective adoptive parents and following a special procedure established by the Code of Civil Procedure. The adoption requires the opinion of the regional governor's office regarding the grounds for adoption and compliance with the interests of the child, based on information on personal contact between the child and the

[24] See arts. 131.1 and 132.1 of the Criminal Code and arts. 33 and 183 of the Code of Criminal Procedure.

[25] See www.endcorporalpunishment.org/assets/pdfs/states-reports/Armenia.pdf.

prospective adoptive parents. If the child is 10 years old or above, his or her consent is mandatory, under article 121 of the Family Code. The Law on Social Protection of 2014 strengthened the mandate of case managers in child protection issues with new roles in adoption, guardianship and foster care.

35. In 2014, the Government embarked on a review of the legal framework and practice of the domestic and intercountry adoption system in order to bring it into line with international norms and standards, in particular the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. The Ministry of Labour and Social Issues has drafted and submitted to the Ministry of Justice the draft law on amendments and supplements to the Family Code. The draft law includes provisions aimed at improving monitoring mechanisms of adoption processes, criteria to select foster parents, and mechanisms to monitor follow-up. The Special Rapporteur urges the authorities concerned to ensure that the draft law regulates adoption and acknowledges it as a measure of last resort, prioritizing the best interests of the child instead of the interests of the prospective adoptive parents, inter alia through provisions on the information system of adoptions and the matching process that meet international child rights norms and standards. Information on adoptive children and prospective parents should be accessible only to adoption bodies and professionals directly concerned with the matching process, not prospective parents.

36. The Special Rapporteur commended Armenia for enhancing its efforts to combat trafficking in persons through the adoption in 2015 of the Law on Identification and Assistance to Victims of Human Trafficking and Exploitation. The law establishes standard procedures for national and local government bodies, NGOs, international organizations and civil society to identify, support, protect and reintegrate suspected and identified victims of trafficking. [26] Since the introduction in 2013 of legislative amendments, trafficking in children for sex and labour purposes is considered a serious crime punished with 5 to 15 years of imprisonment, under article 132 of the Criminal Code.

37. The Special Rapporteur welcomed the adoption in December 2015 of the law on the amendments and supplements to the national laws on refugees and asylum, which aims to enhance the protection of unaccompanied child asylum seekers. She urged the Government to speed up the adoption of the law to combat violence against women and domestic violence as an essential tool to effectively combat and prevent child sexual abuse and exploitation.

B. Institutional framework

38. In 2005, Armenia established a three-tier child protection system with the aim of ensuring the implementation of an integrated approach to the protection of children's rights at the national, *marz* and community levels.[27] Deficiencies in the institutional framework for the delivery of child protection services emerged from the outset and have not been properly addressed by consecutive legal and administrative reforms. In particular, the role of the National Commission for the Protection of the Rights of the Child, the regional Divisions on Family, Women and Child Rights Protection, and the guardianship and trusteeship bodies and commissions have been highly criticized for failing to protect children effectively.

[26] See www.state.gov/documents/organization/243558.pdf.

[27] See www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/08/25/000442464_20140825134445/Rendered/PDF/900830WP0Box380rmenia0CR020120FINAL.pdf.

39. The National Commission for the Protection of the Rights of the Child is the inter-agency body at the top of the three-tier system. It is tasked with ensuring coordination in the implementation of child protection policies, including the National Programme on the Protection of the Rights of the Child. It is also responsible for issuing opinions on draft legislation affecting the rights of the child. It is chaired by the Ministry of Labour and Social Issues and composed of representatives of the Ministries of Justice, Territorial Administration, Health, Finance, Education and Science, and Culture, and of the police. The National Commission has been criticized for lacking a strategy and for limiting its activities to holding regular discussions without comprehensive and expert examination of child rights and protection issues. It does not conduct any impact assessment of child protection laws and programmes, and its recommendations do not seem to influence decision-making bodies. Hence it fails to meet the role of an effective body for coordination, oversight and assessment, owing partly to the inadequate designation of powers and the insufficient allocation of human, technical and financial resources. Those shortfalls have persisted, despite efforts to strengthen the role of the National Commission, including the revision of its rules of procedure.

40. At *marz* and Yerevan municipality levels, the child protection units represent the middle tier of the national child protection system. They were established in 2006 to implement the child protection policies adopted by the Government. The units within the 10 regional governors' offices are tasked with providing direction on child rights issues at the regional level. Their effectiveness is hampered by their limited staff and overlapping functions. They have no role in the planning and coordination of delivery of services at the regional level, and do not have monitoring or evaluation functions, which hinders their effective role as second layers of the national child protection system.

41. At the community level, the guardianship and trusteeship bodies, including the guardianship and trusteeship commissions therein, are tasked with securing the protection of children in vulnerable situations, such as children without parental care and children in conflict with the law. The bodies are headed by the community mayor and composed of five to eight volunteer members. The involvement of social workers is discretionary. The guardianship and trusteeship commissions engage with families in the communities and are vested with important roles, including in the identification of guardians and in determining whether children should be adopted. According to the Law on Social Protection, any decision made by the guardianship and trusteeship bodies must be in the best interests of the child, and take into consideration professional studies by members of those bodies, case proceedings and conclusions of regional agencies of social services. However, the Special Rapporteur noted with concern that the absence of professional social workers in the guardianship and trusteeship bodies means that they are unable to offer vulnerable families proper support and advice, adequately evaluate prospective adoptive families or ensure that adoption is in the best interests of the child. Despite their important role, and owing to their lack of expertise, the guardianship and trusteeship bodies are considered the weakest tier of the national child protection system. The Special Rapporteur recommends that those bodies and commissions be integrated and guided by professional and trained social workers who take decisions based on the best interests of the child.

42. The Special Rapporteur urged the Government to address, as a matter of urgency, the weaknesses and gaps in the three-tier system to ensure its effectiveness as the model for implementation of an integrated child protection system. The National Commission for the Protection of the Rights of the Child must be strengthened with binding decision-making powers and the resources necessary to ensure its coordinating and supervisory role in the implementation of a comprehensive child protection policy. The National Commission must ensure collaboration between the ministries in coordinating the activities aimed at improving the provision of services to children, inter alia through the adoption of an annual action plan of activities to guide relevant agencies and partners to implement the National

Programme on the Protection of the Rights of the Child. In respect of the first and second tiers, important decisions affecting the lives of children, such as separation from family and placement in alternative care, should be taken by trained, supervised professionals who represent the State and who have clear authority and accountability. The Special Rapporteur welcomes the recent reforms on the integrated social protections system and the appointment of child protection case managers to exercise those functions. The Special Rapporteur stresses the importance of properly training and strengthening case managers at the local level in order to ensure respect for the best interests of the child in child protection cases.

43. The Human Rights Defender of Armenia is responsible for addressing violations of the rights of the child. In 2013, his office received 50 complaints, mostly concerning issues related to social security, education and health.[28] The limited number of complaints is partly the result of the lack of awareness among children of the role of the Human Rights Defender. Although his office has a generic hotline and helpline (116), it lacks child-friendly reporting and complaint mechanisms. In 2014, UNICEF supported the Human Rights Defender to conduct research and make recommendations for the establishment of an individual complaint mechanism for children.[29] The Special Rapporteur called on the Human Rights Defender to prioritize the monitoring of child rights violations through awareness-raising and the establishment of child-friendly complaint mechanisms. Moreover, she urged the national authorities to strengthen the capacities of the Human Rights Defender in order to enable his office to effectively address child rights violations, including cases of child sexual abuse and exploitation.

44. The Ministerial Council to Combat Trafficking in Persons, headed by the Deputy Prime Minister, and its adjunct Inter-Agency Working Group against Trafficking in Persons, led by the Ministry of Foreign Affairs, have been commended for their effective coordination in combating trafficking in persons, including children. The Ministerial Council is the decision-making body in charge of the Government's anti-trafficking action plan, while the Inter-Agency Working Group coordinates and advises on its implementation. The Special Rapporteur encouraged the two bodies to increase their focus on crimes involving the sale and sexual exploitation of children through better identification and reporting in order to inform effective prevention and protection policies. Moreover, she urged them to redouble their efforts concerning the effective investigation of perpetrators, comprehensive care and recovery of child victims, and when addressing the root causes of the phenomena.

45. The Special Rapporteur also commended the work carried out by the Working Group led by the Police Department on the Protection of Juvenile Rights and the Fight against Domestic Violence as a good example of effective cooperation between law enforcement and child protection units at the *marz* level for the prevention and referral of crimes against children. However, she encouraged them to focus more on following up cases that had been reported.

46. Following the reform of inspection bodies, the responsibility for labour inspection, including child labour inspection, has been transferred from the Ministry of Labour and Social Issues to the Ministry of Health. A new inspection body, the State Health Inspectorate, has been established by joining the former Labour Inspectorate and the Anti-Epidemiological Inspectorate. The Special Rapporteur expressed concern about the negative impact that the merge may have had in the conduct of child labour inspections and

[28] See https://armenia.savethechildren.net/sites/armenia.savethechildren.net/files/library/book-eng.pdf.

[29] See www.unicef.org/about/annualreport/files/Armenia_Annual_Report_2014.pdf.

the enforcement of child labour laws, which were already weak and unsatisfactory under the former Labour Inspectorate.[30]

C. Policies and programmes to address the sale of children, child prostitution and child pornography

1. Policies on child protection

47. In 2012, the Government adopted the Strategic Programme and Plan of Action for the Protection of the Rights of the Child 2013-2016. Out of the 62 actions that require funding, 25 are financed through the State budget and the rest depend on external funding. The Government has been criticized for not making a serious investment in the implementation of its strategic child protection programmes. Other criticism refers to the lack of progress and impact assessment of policies and budget allocations, and the short-term focus of the projects and programmes that are implemented, owing to their heavy reliance on external funding.

48. The Strategic Programme for the Protection of the Rights of the Child acknowledged the shortcomings of the national data collection system in relation to child rights and protection issues. For instance, information on certain groups of vulnerable children and child victims, such as victims of sexual abuse, violence and exploitation, is not consistently collected by all stakeholders, and information that is collected is not sufficiently disaggregated, with the exception of data gathered by the police. Data contained in various databases are not analysed in a comprehensive manner and do not inform targeted programming. Mechanisms to exchange information between various institutions are lacking. According to UNICEF, despite the availability of a set of significant statistical databases, the overall level of fulfilment of children's rights cannot be properly assessed owing to limitations in the quality of the collected data and the lack of compatibility across different government agencies.[31] The Special Rapporteur stressed the importance of collecting and analysing disaggregated data to build a child protection system that can be monitored in order to inform effective policymaking and ensure accountability in the delivery of child protection services.

49. Other strategies and programmes adopted by the Government in relation to child rights and protection issues include the 2006-2010 strategy on the social protection reform for children in difficult life situations and the strategic programme for the reform of childcare institutions. In February 2014, the Government adopted the National Strategy on Human Rights Protection, which stresses the need to develop a comprehensive strategy to combat violence against children, under the joint responsibility of the Ministry of Labour and Social Issues and the police. In December 2014, the Government adopted the 2015-2018 Framework on the Fight against Violence against Children. The Special Rapporteur urged the Government to prioritize the effective implementation of the National Action Plan for Human Rights in complementarity with the Strategic Programme for the Protection of the Rights of the Child, as well as the Framework on the Fight against Violence against Children, through the allocation of adequate means and resources.

2. Investigation and prosecution

50. Official data from law enforcement, prosecution and the judiciary at the national and *marz* levels show that few cases of sale and sexual exploitation of children are investigated,

[30] See www.dol.gov/ilab/reports/child-labor/findings/2013TDA/armenia.pdf.

[31] See www.unicef.org/about/annualreport/files/Armenia_Annual_Report_2014.pdf.

and few perpetrators prosecuted and punished. However, the Special Rapporteur doubted that the statistics reflected the scale of the problem, given that cases of child sexual abuse and exploitation are not systematically reported, investigated and prosecuted. The Special Rapporteur noted that sociocultural factors play an important role in underreporting. Legislative gaps, the absence of child-friendly identification and reporting, and the lack of awareness and specialized training of prosecutors who deal with crimes of sale and sexual exploitation of children also considerably affect the effective prosecution of cases.

51. Detection and referral of cases of sexual abuse and exploitation of children in Armenia depends almost exclusively on law enforcement agencies. The Police Department on the Protection of Juvenile Rights and the Fight against Domestic Violence operates, together with the NGO Fund for Armenian Relief Children's Support Centre, a 24-hour toll-free hotline to report child abuse and exploitation cases. The Special Rapporteur commended that police department for organizing regular training courses on the detection of the sale and sexual exploitation of children, which have resulted in 307 police officers dealing with juvenile issues being trained in 2014 and 2015. In turn, as part of their prevention efforts, the police officers organize awareness-raising meetings at educational institutions on the issue of violence and exploitation of children.

52. The Special Rapporteur also commended various trafficking-related training activities conducted in 2014 by the Ministry of Labour and Social Issues for over 270 civil servants, and approximately 600 police at the Police Academy.[32] She encouraged the authorities concerned to include in the curricula of all police departments and prosecutors topics related to crimes against children, such as sale and sexual exploitation, training on how to detect, investigate and refer cases, and how to adopt a child-friendly and gender-sensitive approach when dealing with child victims and witnesses.

53. During meetings with prosecutors in the Lori and Sharik regions, the Special Rapporteur took note of their efforts to implement child-friendly measures in criminal proceedings involving child victims and witnesses, such as conducting interviews of children in the presence of a parent or legal guardian, carrying out psychological assessments prior to trial, having the child testify in a separate courtroom, and adjusting questioning so as to eliminate intrusive questions. However, the Special Rapporteur noted that those measures were fragmented, adopted on an ad hoc basis and at the discretion of the officials involved, and implemented depending on the availability of the necessary means. Consequently, the Special Rapporteur called on the Office of the Prosecutor General to issue guidelines to all prosecutors in the country on measures to ensure child-sensitive methodology when dealing with cases involving child victims of sexual abuse and exploitation. Moreover, the Special Rapporteur called on the Prosecutor General to promote a proactive prosecutorial strategy to combat those offences, and to provide capacity-building and specialized training to prosecutors in order to fully incorporate respect for the best interests and well-being of the child in prosecutorial work.

3. Care, recovery and reintegration of child victims

54. Support for rehabilitation and reintegration of victims is regulated only in relation to cases of trafficking. Article 20 of the Law on Identification of and Assistance to Victims of Trafficking and Abuse establishes that victims have the right to assistance and protection. The Government created a National Referral Mechanism for Trafficked Persons that defines procedures and agencies responsible for identification, referral, assistance and protection of victims of trafficking, including children. Assistance to victims covers in-kind, legal, medical and psychological support, and the integration into various social,

[32] See www.state.gov/documents/organization/243558.pdf.

education and employment projects.[33] The Special Rapporteur noted that most of the referrals for assistance of child victims are made to NGOs such as Zatik and Hope and Help. Moreover, she noted with concern that there was no special shelter available for child victims of trafficking; children are housed in a shelter for adult victims of trafficking or referred to a childcare institution. The Special Rapporteur learned that the police also refer child victims to community-based rehabilitation centres, where specialists provide psychosocial assistance. She encouraged the relevant authorities to expand the network of those centres.

55. Care and recovery services for child victims of abuse and exploitation are provided mainly by NGOs such as the Fund for Armenian Relief in Yerevan. However, few organizations have the expertise, experience, training and means to identify and assist that category of child victim. The Special Rapporteur noted with concern that the few organizations that provide assistance to child victims are mainly focused on short-term or emergency assistance. She urged the Government to assume its primary responsibility in providing comprehensive, child-centred and rights-based care, recovery and reintegration programmes for child victims through professional and trained staff, including psychologists and social workers, and the allocation of the means necessary to support long-term recovery and reintegration, as well as follow-up. The Special Rapporteur also called on the Government to develop specific protocols to ensure the effective identification and referral of child victims of sexual abuse and exploitation.

4. Residential institutions

56. In 2014, 683 children were placed in boarding schools and 720 children were placed in orphanages, including approximately 500 children who were placed in specialized orphanages.[34] Most of the children placed in institutions have both parents (51 per cent) or one parent (22 per cent), and only 4 per cent are left without parental care.[35] Poverty and the lack of socioeconomic support for families has created those so-called "social orphans". Children growing up in those settings are often stigmatized, their future development is limited and they are vulnerable to abuse and exploitation.

57. It is important that the Government shifts its focus from institutionalization towards care in a family environment and community-based services. The Special Rapporteur commended the Government's efforts to reduce the number of children in residential institutions and encouraged it to speed up the process of deinstitutionalization. Indeed, the number of children in orphanages has decreased considerably, from 1,253 in 2008 to 927 in 2013, while the number of children returned to their relatives has remained stable: 52 in 2008 and 53 in 2013. However, the Special Rapporteur noted with concern that the number of children with disabilities placed in orphanages has increased from 402 in 2008 to 475 in 2013.[36]

58. The Special Rapporteur stressed the need to review the way that alternative care is funded, since it favours continuing reliance on institutional placements and contributes to adoption being viewed as the most appropriate response, instead of family-based alternative care settings.[37] Moreover, it is essential that qualified social workers be appointed, trained and involved in decisions concerning alternative care and adoption, based on individual requirements. The Special Rapporteur commended the work of UNICEF in support of the

[33] See www.dol.gov/ilab/reports/child-labor/findings/2013TDA/armenia.pdf.

[34] Data provided by the Government.

[35] UNICEF Report, Rapid assessment of residential childcare institutions under the Ministry of Labour and Social Issues of the Republic of Armenia, 2014.

[36] See www.armstat.am/en/.

[37] See www.unicef.org/armenia/Costing_Residential_Care_Institutions_in_Armenia_report_eng.pdf.

Government's childcare reform in order to ensure children's rights to a family environment through the establishment of alternative family and community-based services for vulnerable children and families.

59. The number of children with disabilities in special orphanages is rising. Many deficiencies have been noted in the way disability is assessed, which has a direct impact and long-term consequences on the child; children considered to have a disability often end up in residential care. The Special Rapporteur noted that problems that are easily treatable with appropriate resources are classified as special needs. Parents often feel that they have no choice but to request the placement of the child in an institution. In 2014, UNICEF worked with the United Nations Development Programme, the Office of the United Nations High Commissioner for Human Rights and the Ministry of Labour and Social Issues to revise the disability determination in Armenia in accordance with the Convention on the Rights of Persons with Disabilities. The Government also approved a policy on determining disability for children and young people based on the World Health Organization International Classification of Functioning, Disability and Health.[38] The Special Rapporteur called on the Government to ensure the right of children with disabilities to a family environment and to development through support to their families and provision of specialized assistance.

60. The Special Rapporteur also noted with concern that there are no oversight mechanisms to monitor the situation of children placed in residential institutions, foster families, adoption, or under guardianship or trusteeship. The Special Rapporteur noted that the quality of the care provided in orphanages in Armenia has been criticized in the past, with reports of beatings, abuse and exploitation.[39] Oversight and independent monitoring mechanisms and procedures to report cases of abuse and exploitation would contribute to effectively preventing and combating such cases.

5. Prevention

61. According to most of the officials who spoke to the Special Rapporteur, the sale and sexual exploitation of children is not an issue in the country. However, in her meetings with various stakeholders, including child protection NGOs and medical personnel who assist victims, she learned of numerous cases of child abuse, violence and exploitation, including sexual exploitation, that go undetected and unreported owing partly to lack of awareness, knowledge and understanding of the phenomena. The Special Rapporteur encouraged those stakeholders to enhance cooperation with law enforcement agencies to combat the lack of reporting of cases, in order to trigger a response by law enforcement. Youth representatives also conveyed the need to combat social norms and taboos that dictate that such cases must be dealt with within the family.

62. The Special Rapporteur welcomed the adoption of the 2015-2018 Framework on the Fight against Violence against Children, and called on the Ministry of Labour and Social Issues to allocate the necessary funds to launch comprehensive awareness-raising campaigns and education programmes on the rights of the child, equality among boys and girls, and parenting and education skills to combat abuse and violence against children in the home and in schools. In order to be effective, the awareness-raising efforts must be accompanied by the establishment of child-friendly reporting and referral mechanisms to integrated support services. Moreover, preventive measures must encourage and facilitate

[38] See www.unicef.org/about/annualreport/files/Armenia_Annual_Report_2014.pdf.

[39] See www.crin.org/en/library/news-archive/armenia-orphanages-are-deplorable-condition-claims-new-report.

child participation and empowerment by supporting children to gain broader knowledge about their rights and the options available to them to address abuse.

63. With regard to online sexual abuse and exploitation, the Special Rapporteur commended the private Internet service providers for their prevention and protection initiatives to raise awareness, detect, report and reduce risks associated with Internet usage, and encouraged the Government to take the lead in order to coordinate and enhance the impact of existing initiatives. The Special Rapporteur also welcomed awareness-raising initiatives that the police on juvenile affairs conducts at educational institutions, covering topics such as safe Internet usage. Officers of police territorial subdivisions also carry out preventive awareness-raising activities, through meetings with students at schools and with the involvement of relevant government bodies and NGOs. The Special Rapporteur called on the Government to increase campaigns on digital education and safe Internet usage, in partnership with Internet service and content providers, law enforcement, media, schools and NGOs, building on programmes such as "Secure Internet" and "Children's Online Security" targeted at children, parents and educators.[40]

6. Child participation and empowerment

64. The Special Rapporteur noted a big deficit in child participation mechanisms and practices in Armenia. She underlined the need for greater systematic participation of children in policies and programmes affecting them, including on child abuse, violence and exploitation. The Special Rapporteur encouraged the Human Rights Defender to improve access to his office for children and to promote child participation spaces and practices so that children can take part in finding solutions and are empowered to fight for their own protection.

65. A good practice noted by the Special Rapporteur is the child-friendly spaces and forums facilitated by the KASA Foundation in Yerevan and Gyumri. In those spaces, young people informed the Special Rapporteur that children are not consulted about their views and needs, and that they do not feel that they are taken into consideration at home, at school or by the Government. Gender discrimination and inequality, domestic violence and violence against children are major issues of concern for them. They stressed the need to conduct awareness-raising campaigns to break the silence around domestic violence and to establish child-friendly reporting and complaint mechanisms, as well as referral to integrated support services by trained professionals for the recovery and reintegration of child victims. The Special Rapporteur encouraged the Government to support child-led organizations and peer-led initiatives in order to ensure child participation in the public and private spheres.

7. Corporate social responsibility

66. During her visit, the Special Rapporteur met with representatives of private Internet service providers, who shared information about their prevention and protection initiatives against online child sexual abuse and exploitation. They included awareness-raising campaigns, such as "Safe Internet month", targeted at 5,000 children and parents, and education campaigns at schools on safe Internet usage conducted jointly with law enforcement and NGOs. Private companies also offer services to increase parental control over Internet usage by children, even though the services are not in high demand owing to parents' lack of knowledge. Telecommunications companies also have applications to detect and report child abuse material and exploitative situations online.

[40] See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/reports-2014/ga_report_2014_-_armenia_en.pdf.

67. Internet service providers acknowledged that there is room for improvement in the area of prevention and protection to tackle online child sexual abuse and exploitation. There is a need to boost awareness-raising and education among parents, and to adopt measures to combat the phenomena online by establishing hotlines and helplines to report online abuse and exploitation, and by adopting measures to detect, block and close websites that contain child abuse material. The Special Rapporteur urged the Government to take the lead and coordinate public-private-NGO partnerships to combat the phenomena in order to increase the impact of efforts initiated by the private sector. She also encouraged Internet service providers to adopt the Guidelines for Industry on Child Online Protection produced by the International Telecommunication Union and UNICEF to assist industry in understanding how to act in a corporately responsible way.

III. Conclusions and recommendations

A. Conclusions

68. **Although the official statistics indicate that there have been relatively few cases of the sale and sexual exploitation of children in Armenia, the Special Rapporteur notes with concern that the exact scope of the phenomena is difficult to determine owing to the gaps in legislation, awareness-raising and education, the lack of child-friendly reporting and complaint mechanisms, and the insufficient specialized training of the professionals who deal with child victims. During her visit, the Special Rapporteur learned from child protection professionals and care providers, among others, about numerous cases of abuse, violence and exploitation of children, including sexual exploitation, which go undetected and unreported. The failure to report such incidents has a major impact on the child victims, since it affects their access to care and recovery, and results in impunity for the perpetrators. Moreover, the Special Rapporteur observed various multidimensional factors, such as poverty and gender inequality, which increase the vulnerability of children to sexual exploitation and sale.**

69. **The Special Rapporteur took note of the progress made by the Government in various areas, including combating trafficking in persons, reducing the placement of children in residential care, and limiting intercountry adoptions to a measure of last resort in terms of childcare. She encourages the Government to continue with the necessary legislative, institutional and policy reforms, and enhance social protection policies and family strengthening programmes in order to improve the protection of children in Armenia. More importantly, the Special Rapporteur calls on the Government to launch comprehensive awareness-raising campaigns and education programmes on the rights of the child and to combat violence against children in all settings, with the ultimate goal of ensuring that children are perceived and treated as right-holders and that violations of their rights, such as sexual abuse, child marriage, illegal adoption and forced labour, are investigated and the perpetrators prosecuted and punished. She calls on the Government to assume its primary responsibility in ensuring the right to care, recovery and reintegration of children victims through the allocation of adequate means and resources, including ad hoc facilities and specialized personnel.**

B. Recommendations

70. **In order for the Government of Armenia to consolidate its achievements, overcome the remaining challenges and ensure the effective protection of all children without discrimination, in compliance with international norms and standards, the**

Special Rapporteur recommends the actions described below, and stands ready to offer her full cooperation and assistance in their implementation.

71. **The Special Rapporteur stresses that a robust national child protection system starts with a comprehensive legal framework which prevents and prohibits all forms of sale and sexual exploitation and protects children from them. Regarding legislation, the Special Rapporteur recommends that the Government and the National Assembly:**

(a) **Ensure the full incorporation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography into domestic legislation, including the definition of sale of children, the prohibition and criminalization of accessing and disseminating child abuse material online, and the elimination of exceptions that allow child marriage;**

(b) **Adopt the legislative measures necessary to prohibit all forms of violence against children in all settings, create a child-sensitive justice system, and ensure the right to care, recovery and rehabilitation of child victims;**

(c) **Prioritize the passing of the law against domestic violence and the amendments to the Family Code, and ensure their compliance with international human rights norms and standards, including the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption;**

(d) **Ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence;**

(e) **Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.**

72. **In order to effectively prevent and combat the sale and sexual exploitation of children, the Government should develop an appropriately structured and resourced child protection system under a comprehensive and cohesive plan of action that complies with child rights instruments and standards by:**

(a) **Ensuring the effective implementation of the Strategic Programme and Plan of Action for the Protection of the Rights of the Child in complementarity with the National Action Plan for Human Rights, through the allocation of adequate resources and reducing dependence on external funding;**

(b) **Collecting and analysing disaggregated data to inform effective policymaking, building a child protection system that can be monitored, and ensuring accountability in the delivery of child protection services;**

(c) **Establishing a centralized, standardized and reliable information system, thus enabling information sharing between relevant entities at the national level;**

(d) **Mobilizing and involving all stakeholders, including children and young people, in the process of elaboration, implementation, follow-up and monitoring of national child protection policies and programmes;**

(e) **Addressing the weaknesses and gaps of the three-tier child protection system by:**

- **Strengthening the National Commission for the Protection of the Rights of the Child with binding decision-making powers and adequate resources to ensure its coordinating and supervisory role in the implementation of a comprehensive child protection policy, through the adoption of an annual action plan of activities to guide agencies and partners responsible for**

implementing the National Programme on the Protection of the Rights of the Child;

- **Strengthening child protection units at the *marz* level by increasing professional staff and assigning them functions in the planning, coordination and monitoring of delivery of child protection services at the regional level;**
- **Strengthening the guardianship and trusteeship commissions at community levels with professional staff, including child protection case managers and trained social workers, to ensure that decisions regarding child protection cases are based on the best interests of the child;**
- **Establishing effective coordination and accountability mechanisms through the regulation and monitoring of child protection standards at all levels.**

73. **The Special Rapporteur urges relevant national authorities to enhance efforts to identify, detect and ensure the effective and full investigation of the sale and sexual exploitation of children and the prosecution and punishment of perpetrators thereof, and in particular requests:**

(a) **The Government to establish child-friendly reporting, complaint and referral mechanisms, including helplines and hotlines, free of charge and managed by trained professionals, to report abuse, violence and exploitation of children;**

(b) **The Government to adopt the necessary measures to establish a child rights unit at the Office of the Human Rights Defender and provide it with the necessary resources;**

(c) **The Human Rights Defender to prioritize the monitoring of child rights violations, and to improve children's access to his Office through awareness-raising and child-friendly complaint mechanisms; and to promote child participation spaces and practices so that children can take part in finding solutions and are empowered to fight for their own protection and that of their peers;**

(d) **The Office of the Prosecutor General to issue guidelines for all prosecutors in the country on measures to ensure child-sensitive methodology when dealing with cases involving child victims of sexual abuse and exploitation; promote a proactive prosecutorial strategy to combat those offences, and provide capacity-building and specialized training to prosecutors in order to fully incorporate respect for the best interests and well-being of the child in the prosecutorial work;**

(e) **Relevant national authorities to organize training for judges, prosecutors and lawyers to increase their knowledge and awareness of crimes against children, including their sale and sexual exploitation, and to adopt a child-friendly and gender-sensitive approach when dealing with child victims and witnesses;**

(f) **The Ministerial Council to Combat Trafficking in Persons and the Inter-Agency Working Group against Trafficking in Persons to increase their focus on the crimes of the sale and sexual exploitation of children through better identification and reporting, effective investigation, referral to comprehensive care and recovery of child victims, and addressing the root causes of the phenomena;**

(g) **The Working Group led by the Police Department on the Protection of Juvenile Rights and the Fight against Domestic Violence to invest more efforts in the follow-up to reported cases of violence and exploitation of children, through the effective cooperation of law enforcement with child protection units at the *marz* levels;**

(h) **The State Health Inspectorate to comply with its monitoring role by enhancing child labour inspections and ensuring the enforcement of child labour laws in the country.**

74. **The Special Rapporteur encourages the Government to adopt sustainable preventive measures that take into account all the underlying factors of sale and sexual exploitation of children, and in particular to:**

(a) **Increase awareness-raising and education programmes to combat sociocultural norms, taboos, fear and shame in cases of abuse, violence and exploitation of children, as a means of effectively combating underreporting and impunity for those crimes;**

(b) **Implement the 2015-2018 Framework on the Fight against Violence against Children, allocating the necessary funds to launch comprehensive awareness-raising and education programmes on the rights of the child, equality among boys and girls, and parenting and education skills to combat abuse and violence against children in the home and in schools;**

(c) **Adopt preventive measures that encourage and facilitate child participation and empowerment by supporting children to gain broader knowledge about their rights and the options available to them to address abuse;**

(d) **Increase campaigns on digital education and safe Internet usage targeted at children, parents, teachers and educators, in partnership with Internet service and content providers, law enforcement, the media, schools and NGOs;**

(e) **Adopt measures to detect, block and close websites that contain child abuse material;**

(f) **Conduct research to understand better and address adequately prenatal sex selection and child marriage, conduct awareness-raising and education campaigns on sexual and reproductive health, and increase the role of girls in society through education and life options.**

75. **In relation to the right to care, recovery and reintegration of child victims, the Special Rapporteur calls on the Government to:**

(a) **Assume its primary responsibility in providing comprehensive, child-centred and rights-based care, recovery and reintegration programmes for child victims through professional and trained staff, including psychologists and social workers, and the allocation of the necessary means to support long-term care and follow-up;**

(b) **Develop specific protocols to ensure the effective identification and referral of child victims of sexual abuse and exploitation;**

(c) **Develop and implement appropriate care systems, including guardianship and child-friendly spaces, taking into account the specific needs and situations of children at heightened risk of abuse and violence, including asylum-seeking and refugee children, and provide training to personnel working with vulnerable children on the heightened risk of abuse and violence;**

(d) **Continue with the deinstitutionalization programme, investing more in alternative care and shifting the focus towards care in the family environment and community-based services.**

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Japan

Addendum

Comments by the Government of Japan on the report of the Special Rapporteur regarding her mission to Japan*

* Reproduced as received.

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The Government of Japan has sincerely addressed issues related to child sexual exploitation such as the sale of children, child prostitution and child pornography on the basis of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and is firmly committed to continue its efforts to address these issues. The Government of Japan welcomes the fact that the Special Rapporteur on the sale of children, child prostitution and child pornography has evaluated positively several measures taken by Japan regarding these issues.

However, despite the Government of Japan's request to the Special Rapporteur that the report be based on fact, regrettably the report contains inaccurate and insufficient statements on the actual situation in Japan and Japanese culture, as well as arguments not based on objective information. Therefore, the Government of Japan requests an explanation as to why the Rapporteur has not accepted certain comments of the Government and would like to clarify the Government's comments and opinions that were not reflected in the Rapporteur's report as follows:

1. Para 8: "However, based on information gathered from different stakeholders who deal with child victims of sexual abuse and exploitation, the Rapporteur understands that there are also boy victims, who are reluctant to report abuse and seek assistance due to fear, stigma or lack of access to gender-sensitive complaint and referral mechanisms."

The police provides necessary advice and guidance to juvenile victims of crime and their families by experienced juvenile guidance officials and counseling specialists at Juvenile Support Centers and police stations. The counseling rooms are soundproofed so that victims can feel relaxed to talk to the officials.

The police also offer a telephone counseling service called "Young Telephone Corner" and receive counselling requests by toll-free call and e-mail to make the service more accessible.

Since the police receive many counselling requests from children themselves (6,017 requests from boys and 7,418 from girls in 2014) and does not consider that it is difficult for boys to access to the service.

2. Para 9: "'Enjo kosai' is conducted without brokers or intermediaries"

It should be; "Enjo kosai" is often conducted without brokers or intermediaries.

3. Para 9, footnote 7: (reference to the U.S. State Department's Trafficking in Persons Report 2015)

Since the U.S State Department's Trafficking in Persons Report is written based on the U.S. State Department's own assessment, it is inappropriate to cite this document in an official UN report.

4. Para 10: "'JK business' is not infrequent among some junior and senior high school-aged girls (12-17), who consider it a part-time job with prestige."

It seems that this statement is not based on objective information such as results of surveys etc. targeting junior and senior high school-aged girls implemented in an appropriate way. Japan regards this sentence as inacceptable because it sends the wrong image of junior and senior high school-aged girls to the international community.

5. Para 15 : "The existence of a contract discourages investigations and prosecutions difficult."

The Government of Japan does not recognize the situation that the existence of a contract discourages investigations and makes prosecutions difficult.

6. Para 17: "They remain nonetheless a significant source of demand for child sex-tourism." and the footnote 11 (quotation of the U.S. State Department's Trafficking in Persons Report 2015)

The Government of Japan does not recognize the situation described in this sentence and the U.S. State Department's Trafficking in Persons Report did not demonstrate the basis of this sentence.

Moreover, since the U.S State Department's Trafficking in Persons Report is written based on the U.S. State Department's own assessment, it is inappropriate to cite this document in an official UN report.

7. Para 17, footnote 13: (reference to the U.S. State Department's Trafficking in Persons Report 2015)

Since the U.S. State Department's Trafficking in Persons Report is written based on the U.S. State Department's own assessment, it is inappropriate to cite this document in an official UN report.

8. Para 18 : Okinawa prefecture is particularly affected by poverty and higher unemployment, divorce and teen pregnancy rates; economic hardship and the weakening of families render children vulnerable to sexual exploitation.

There is no data or information that enables a logical explanation to the claim that "poverty and higher unemployment, divorce and teen pregnancy rates" are factors that make children in Okinawa vulnerable to sexual exploitation.

9. Para 19: "'Junior idols' are popular among some teenagers and constitute a big market."

It seems that the statement "'Junior idols' are popular among some teenagers" is not based on objective information such as results of surveys etc. implemented in an appropriate way.

Also the statement "'Junior idols' ... constitute a big market." is not based on objective data such as information about market size.

10. Para 19: "the demand side of sexual exploitation of children is overlooked"

There are no facts pertaining the statement that the demand side is being overlooked, since the police warns the demand side by appropriate announcement about the cases to the mass media when the police arrest the suspects of those crimes, or refer the cases to the prosecutors' offices for prosecution.

11. Para 24 : "According to international human rights norms and standards, child pornography is any pornographic representation of a child, regardless of whether the depicted child is real or virtual." and footnote 16.

The Government of Japan's stance on each document referred to in footnote16 is as follows. The Government considers that it is not clear that each document constitutes international human rights norms and standards. The Government understands that no General Comments regarding this issue has been published by the Committee of the Rights of the Child.

a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (article 2(c)):

The Government of Japan considers that the "child pornography" in the Optional Protocol does not include pornography of a virtual child.

b) Council of Europe Convention on Cybercrime (article 9-2 c):

Regarding article 9-2c of the convention, each party may reserve the right not to apply it (article 9-4). The Government of Japan reserved the right not to apply article 9-2c on the basis of article 9-4, when it concluded the convention.

c) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (article 20.2):

The related provisions of the convention are almost the same as the Optional Protocol.

d) Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on child pornography on the internet (A/HRC/12/23, para. 124 (b) (iii)):

The report of the Special Rapporteur only reflects her personal views or opinions which cannot be considered to form the international human rights norms and standards.

12. Para 26 : "Moreover, the legal requirement common to the two last types of child pornography ("which arouses or stimulates the viewer's sexual desire") is interpreted in a restrictive way and hence applied in extreme cases."

This is not true. In Japan, the authorities are appropriately applying punishment clauses including in cases concerning child pornography defined in article 2 paragraph 3 (ii) and (iii).

13. Para 26 : "The Special Rapporteur noted that this definition is narrower than the one contained in article 2 (c) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography."

The Government of Japan considers that the definition of "child pornography" in the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children is in conformity with that of the Optional protocol. The term "for primarily sexual purposes" in the definition of "child pornography" on the Optional Protocol has the same meaning as the phrase "which arouses or stimulates the viewer's sexual desire" in the Act.

14. Para 28 : "The Child Welfare Act defines a child as any person under the age of 18. The age for sexual consent is set at 13, which constitutes a major difficulty in the prosecution of sexual crimes against children. The Civil Law sets legal adulthood at 20 years, which creates a social protection gap for 18-19 year-old persons who are not protected by the Child Welfare Act."

This is not true.

In Japan, the Child Welfare Act, the Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and local ordinances provide that sexual acts against a child under 18 years of age can be punished regardless of the child's consent. Therefore, in the entire legal system, protection of children under 18 years of age including those over 13 years old is ensured.

The scope of the Child Welfare Act is under the age of 18, but it doesn't mean that those over 18 years old are not protected legally. The Penal Code and other related laws provide penal regulations regarding sexual exploitation. The Child Welfare Act has particular provisions of prohibition because children under the age of 18 must be further protected.

15. Para 28 : "Despite certain prohibitions contained in the Child Welfare Act (e.g. article 34), it does not protect children from child erotica, "JK services" and the phenomena of "junior idols" as commercial activities which are harmful for children, and should be amended accordingly".

Protection of children from harmful activities for them is legally assured under the Child Welfare Act (Article 34-1 paragraph (9)).

16. Para 28: "Similarly, the protection of children would be enhanced with amendments to the narrow definition of child abuse, and relevant perpetrators, of the Child Abuse Prevention Act (articles 2(2) and 3)."

Article 3 of the Act prescribes "No person shall abuse a child", and this prohibits not only child abuse from custodians as defined in Article 2 of the same Act, but also acts and inactions that lead to the harming of children's welfare. The acts prohibited by the same Act also include forcing children to be engaged in commercial activity that harm children's welfare. In addition, perpetrators could be subject to punishment under the penal code or related laws regardless of being a custodian.

17. Para 29 : "Article 22.3 of the latter (which prohibits amusement traders engaging persons under 18 in jobs involving entertaining guests) is not applied to "JK business", since not all forms of "JK business" are considered to be part of the amusement business.

The claim that Article 22.3 of the Law is not applied to "JK business" is incorrect. It is a fact that not all forms of JK business is not part of the amusement business, but there is some cases in which Article 22.3 of the Law was applied to "JK business." The application of the Law depends on business forms.

18. Para 32 : "Child consultation centers have been criticised for lacking sufficient facilities and specialised staff, and for not incorporating child participation measures into their work, despite the management guidelines of child consultation centers.."

When the child consultation centers provide support to the victims of child abuse, professional staff (e.g. child welfare officers, child psychology officers, psychiatrists) perform specialized support individually.

The management guidelines of child consultation centers prescribe "to respect opinion of child and custodian" as one of the considerations on operation.

19. Para 34 : "the 'Vision for Children and Young People' adopted by the Cabinet Office in 2010 makes a limited reference to sexual exploitation of children."

Although the intention of the term "limited" is not clear, the Government of Japan recognizes necessary measures are included in the "Vision for Children and Young People."

In addition, "Outline for the Promotion of Development and Support for Children and Young People," newly adopted in February this year, covers a broader reference to our policies on sexual exploitation of children.

20. Para 38 : "It is also believed that international pressure has played a role in enhancing the focus on combatting child abuse material in detriment of child prostitution."

This is not true. The police have also been actively investigating child prostitution cases.

21. Para 40 : "Investigators and prosecutors have been criticized for being reluctant to take up child pornography cases because the victims are not identified and their age is difficult to determine. The Special Rapporteur called on law enforcement and prosecutors to conduct proactive investigations and prosecutions to overcome such difficulties."

The police and the prosecutor's office have been actively conducting their investigation and prosecution even in cases in which a victim depicted in the photo cannot be identified by

proving that the victim is a child through age determination by a physician, and are not criticized for being reluctant to take up child pornography cases.

22. Para 41 : "The Rapporteur expressed concern over the high rate of suspension of sentences rendered for offences of sexual exploitation of children. Consequently, she urged the judiciary and authorities concerned to ensure the full implementation of convictions in order to avoid impunity for these crimes."

Japan is of the view that whether or not an act constitutes a criminal offense as well as its gravity which grounds the decision of indictment or non-indictment and the sentencing of the court, should be decided on the basis of evidence collected in each concrete case. In regard to cases of child sexual exploitation, Japan takes into account the seriousness of these crimes, and is taking strict action in each concrete case. The suspension of execution of the sentence in Japan is a system which allows the suspension of the execution of the sentence for a certain period of time, in light of circumstances, when sentencing a person to imprisonment etc.. When the person commits a further crime within the period of suspension, the suspension of execution of the sentence will be revoked and the person will be in prison for the period of the suspended sentence plus the period sentenced for the further crime. Therefore, it should not be regarded as "impunity".

23. Para 49 : "Moreover, the services provided are not adapted to their needs, and staff available is not specialized or adequately trained. Child victims of sexual exploitation are often stigmatized and treated as "juvenile delinquents". Their condition of victims is often ignored, which results in a denial of access to appropriate support."

The child consultation centers provide specialized support by child welfare officers, child psychology officers, and psychiatrists based on the extent of sexual damage.

Also the child welfare institutions employ doctors, nurses and psychologists in certain cases, and provide mental care for victims of sexual abuse.

The management guidelines of child consultation centers (P8-9) prescribe to "respect the human rights of child and custodian", "give top priority to children's best interests", and "respect the opinions of child and custodian" as considerations of their operations.

In addition, the child consultation centers determine the policy providing support based on necessary investigation and judgment from the medical, psychological, pedagogical, sociological and mental health points of view.

The support of children at the child consultation centers is performed individually with consideration to children's opinion, and the support does not intend to criticize the children. The Japan Legal Support Center (the JLSC) provides information concerning relevant laws and the appropriate point of consultation contact to a victim of crime including child victims of sexual abuse and exploitation. The JLSC can refer a victim of crime to an attorney. The JLSC supports crime victims by specialized and adequately trained staff and attorneys. The staff has to complete the special training program to prevent secondary damage. In regard to referral to an attorney, the attorney for a victim of crime has to be enrolled on the list of crime victims support panel of the Bar Association and must have experience and knowledge related to supporting crime victims.

24. Para 50 : "If the child victim or the parent decides not to file a complaint, the child consultation center reports the case to the police. Most of the offenders go unpunished, which is one the main challenges faced by staff at child consultation centers."

Based on the guidelines for treatment of child abuse, the child consultation centers discuss the possibility of prosecution of an act of child abuse by custodians as a criminal case with police and the prosecution office, whenever they consider that prosecuting the case will lead to correct recognition of the present situation and empowerment of the child.

In regard to the part that states "Most of the offenders go unpunished", there is no evidence or verifications on this statement. Regardless of whether the assailant is punished or not, the child consultation centers offer necessary support.

25. Para 51 : "Care workers are not specialised or adequately trained to assist child victims of sexual abuse and exploitation, and there is no adequate system to evaluate staff. Lack of specialised training of care workers affects their ability to gain the trust of children, who as a result might refuse to receive support services of consultation centers."

Care workers are employed as professionals. Every year, training organizations supported by the central government invite experts and clinicians to organize seminars for staff of temporary shelters and child welfare facilities on the assessment, understanding, and addressing sexual problems from the point of view of children's rights.

In addition, staff of the child consultation centers are evaluated based on the performance evaluation system established by each local government.

Based on these facts, the statements here seem to be not well grounded.

26. Para51: "Temporary shelters which are run by child consultation centers are often full."

In the Japanese fiscal year 2014, the number of temporary shelters where the average occupation rate exceeded 100% is only nine (7% of the total number of child consultation centers) and it cannot be said to be a nationwide tendency.

27. Para51: "Children under 13 are accepted as a priority, which has a negative consequence on child victims aged 13 and above."

Temporary protection is provided to child victims based on the level of emergency and necessity of protection, regardless of age.

28. Para 54: "...emphasis of one-stop crisis centers is on women and not children or girls..."

It should be modified to "...emphasis of one-stop crisis centers is mainly for women and not children or girls..." based on the facts. On the other hand, the Government of Japan would like to comment that more than half of the victims received by one-stop crisis centers in Osaka are children, as referred to in paragraph 53, "9% of the 983 victims were 0-9 years old, and 53% were aged 10-19."

29. Para 59: "A child-rights perspective and gender approach must also be introduced in the methodologies and training of care workers."

Regarding the protection of rights of the child and gender, each foster home established management guidelines that determine participation of staff in training seminars about protection of the rights of the child and seminars to learn how to conduct sex education, and third party evaluation is implemented to evaluate if the management of facilities is based on the guidelines.

Also, in the national facilities to support independence of children, training seminars about various themes including the protection of the rights of the child are organized for the staff of child consultation centers and child welfare institutions.

The Government is preparing the submission of a draft amendment of the Child Welfare Act and related laws to the National Diet for the purpose of clarifying the idea that children's appropriate care, healthy growth and independence, among others, should be ensured.